

SENATE BILL No. 392

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-5-6; IC 35-38-5.

Synopsis: Expungement of arrest records. Provides for the expungement under certain circumstances of the arrest records of a person whose conviction has been vacated if the state may not or will not refile charges against the person. Establishes a procedure to restrict access to limited criminal history information concerning state convictions if the person has not been convicted in the previous five years, and prohibits an employer from asking about certain older arrests and convictions.

Effective: July 1, 2009.

Rogers

January 8, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 392

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]:

4 **Chapter 6. Stale Convictions and Arrests**

5 **Sec. 1. As used in this chapter, "stale arrest or charge" means**
6 **an arrest or criminal charge for any crime that occurred more**
7 **than five (5) years in the past.**

8 **Sec. 2. As used in this chapter, "stale conviction" means a**
9 **conviction for any offense if at least five (5) years have passed since**
10 **the person was released from incarceration, probation, or parole,**
11 **whichever occurs last, for the offense.**

12 **Sec. 3. Except as provided in section 4 of this chapter, an**
13 **employer may not ask or require an employee or a prospective**
14 **employee to disclose a stale arrest or charge or a stale conviction.**

15 **Sec. 4. An employer may ask or require an employee or a**
16 **prospective employee to disclose a stale conviction if state or**
17 **federal law specifically requires disclosure of a previous conviction**



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as a condition of employment.

Sec. 5. (a) An employee or a prospective employee may bring a civil action against an employer to enforce section 3 of this chapter.

(b) If an employer violates section 3 of this chapter, the court may do the following:

(1) Award:

(A) actual damages; and

(B) court costs and reasonable attorney's fees; to the prevailing employee or prospective employee.

(2) Enjoin further violation of this chapter.

SECTION 2. IC 35-38-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Whenever:

(1) an individual is arrested but no criminal charges are filed against the individual; ~~or~~

(2) all criminal charges filed against an individual are dropped because:

(A) of a mistaken identity;

(B) no offense was in fact committed; or

(C) there was an absence of probable cause; **or**

(3) an individual's conviction has been vacated and the state may not or will not refile charges against the individual; the individual may petition the court for expungement of the records related to the arrest.

(b) A petition for expungement of records must be verified and filed in:

(1) the court of conviction, if the individual has been convicted;

(2) the court in which the charges were filed, if the individual was charged but has not been convicted; or

(3) if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred, if no criminal charges were filed.

(c) The petition must set forth:

(1) the date of the arrest;

(2) the charge;

(3) the date of conviction, if applicable;

(4) the date the conviction was vacated, if applicable;

(5) the basis on which the conviction was vacated (including the opinion or order from a court), if applicable;

~~(3)~~ **(6) the law enforcement agency employing the arresting officer;**

~~(4)~~ **(7) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;**

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~~(5)~~ (8) the date of the petitioner's birth; and

~~(6)~~ (9) the petitioner's Social Security number.

~~(c)~~ (d) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.

~~(d)~~ (e) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who represent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:

(1) summarily grant the petition;

(2) set the matter for hearing; or

(3) summarily deny the petition, if the court determines that:

(A) the petition is insufficient; or

(B) based on information contained in sworn statements submitted by individuals who represent an agency, the petitioner is not entitled to an expungement of records.

~~(e)~~ (f) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

~~(f)~~ (g) After a hearing is held under this section, the **court shall grant the petition shall be granted of an individual who has not been convicted** unless the court finds:

(1) the conditions in subsection (a) have not been met;

(2) the individual has a record of arrests other than minor traffic offenses; or

(3) additional criminal charges are pending against the individual.

(h) After a hearing is held under this section, the court shall grant the petition of an individual whose conviction has been vacated if the state may not or will not refile charges against the individual, unless the court finds that additional criminal charges are pending against the individual.

SECTION 3. IC 35-38-5-5, AS AMENDED BY P.L.2-2005, SECTION 124, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) This section does not apply to a request to a law enforcement agency for the release or inspection

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of a limited criminal history to a noncriminal justice organization or individual whenever the subject of the request is described in IC 10-13-3-27(a)(8) or IC 10-13-3-27(a)(12).

(b) A person may petition the state police department to ~~limit~~ **restrict** access to the person's limited criminal history to criminal justice agencies if:

- (1) more than ~~fifteen (15)~~ **five (5)** years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime; **and**
- (2) the person has not been arrested in the previous one (1) year.**

(c) **Except as provided in subsections (d) and (e)**, when a petition is filed under subsection (b), the state police department shall not release limited criminal history to noncriminal justice agencies under IC 10-13-3-27.

(d) If the state police department has restricted access to a person's limited criminal history under this section and the person is subsequently convicted of any crime other than a minor traffic offense:

- (1) the state police department shall reopen access to a person's limited criminal history; and
- (2) the person is forever barred from filing an additional petition to limit access to the person's limited criminal history.**

(e) If:

- (1) the state police department has restricted access to a person's limited criminal history under this section;
- (2) the person is subsequently arrested or charged with a crime; and
- (3) there is no disposition for the arrest or charge;

the state police department may release limited criminal history information concerning the arrest or charge if less than one (1) year has elapsed since the date of the arrest or charge.

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